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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH DELANO SPARKS,

Defendant and Appellant.

B206857

(Los Angeles County  
Super. Ct. No. TA088455)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gary R. Hahn, Judge. Affirmed.

J. Kahn, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Michael R. Johnsen and Sarah J. Farhat, Deputy Attorneys General, for Plaintiff and Respondent.

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Keith Delano Sparks appeals from the judgment entered following his conviction by a jury for first degree murder.<sup>1</sup> Sparks's sole contention is that the trial court erred in denying his motion for a new trial based on jury misconduct because the declaration submitted in support of the motion demonstrated undisclosed racial bias by one or two of the jurors who voted to convict him. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Sparks, a member of the 87 Gangster Crips criminal street gang, was charged with first degree murder (Pen. Code, § 187) following what was believed to be a gang-related, drive-by shooting of another member of the same gang. Following trial, at which the defense argued the crime had been committed by yet another 87 Gangster Crips member, the jury convicted Sparks of murder with a special finding he had personally used and intentionally discharged a firearm causing death or great bodily injury (Pen. Code, § 12022.53, subd. (d)). The jury rejected the special allegation the crime had been for the benefit of, and with the specific intent to promote, criminal conduct by gang members (Pen. Code, § 186.22, subd. (b)).

Sparks moved for a new trial pursuant to Penal Code section 1181, subdivision 3, arguing one or two of the jurors had engaged in misconduct by coercing a hold-out juror to change her vote to guilty.<sup>2</sup> In support of his motion Sparks filed a declaration from juror Stephanie R. stating, "4. During the deliberations of the jurors in this case, and based on the evidence that I heard during the trial, I believed that the defendant in this case was not guilty of any of the charges against him as contained in the charging document. The evidence disclosed so much doubt that I felt uncomfortable finding the defendant guilty of the crime of murder and the enhancement of the gang allegation. In my sound judgment, the evidence disclosed abundant reasonable doubts. [¶] 5. As soon

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<sup>1</sup> Sparks was sentenced to an aggregate state prison term of 50 years to life.

<sup>2</sup> Sparks's new trial motion also argued an emotional outburst by a relative of the victim when she was not on the witness stand constituted improper out-of-court evidence under Penal Code section 1181, subdivision 2. That contention was rejected by the trial court, and it is not repeated on appeal.

as I made my position known to the other jurors in the case, [t]wo of the Jurors who went by the first names: George and Sam respectfully descended on me and constantly attacked me. George in particular said I did not believe that the defendant was guilty because the [d]efendant and I are both African-American ([w]hereas, race had nothing to do with my decision). Anytime, I attempted to talk, in most cases, Sam would hiss and would cast a somewhat menacing look at me. Even though I was able to hold on to my decision for the first two days into our deliberation, the pressures that were psychologically mounted upon me by the two jurors forced me to abandon my conviction that the defendant was not guilty. I broke down emotionally during the jurors' deliberation as a result of the verbal personal attack on me and the actions of George and Sam. [¶] 6. I was intimidated and coerced by the actions of the two jurors such that the verdict of guilty that I supposedly agreed to was a product of the improper conduct[] of George and Sam."

The trial court denied the motion for a new trial finding Stephanie R.'s declaration did not establish misconduct: "[T]he declaration was really lacking. It says she was pressured once. Particularly, Juror George, said something although . . . it wasn't racially oriented, but she interpreted it that way. But she changed her mind. Psychological pressure but she changed her mind. Nothing establishes why she changed her mind."

### **DISCUSSION**

Every criminal defendant has a right to a trial by an unbiased, impartial jury. (U.S. Const., 6th & 14th Amends.; Cal. Const., art. I, § 16.) A criminal defendant may move for a new trial on specified grounds, including juror misconduct. (Pen. Code, § 1181, subds. (3), (4);<sup>3</sup> *People v. Ault* (2004) 33 Cal.4th 1250, 1260.) When a party

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<sup>3</sup> Penal Code section 1181 provides, "When a verdict has been rendered or a finding made against the defendant, the court may, upon his application, grant a new trial, in the following cases only: [¶] . . . [¶] 3. When the jury has separated without leave of the court after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented; [¶] 4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors . . . ."

seeks a new trial based on jury misconduct, the court undertakes a three-step inquiry. First, the court must determine whether the declarations offered in support of the motion are admissible under Evidence Code section 1150.<sup>4</sup> If they are, the court must next consider whether the facts establish misconduct. Finally, assuming misconduct is found, the court must determine whether it was prejudicial. (*People v. Duran* (1996) 50 Cal.App.4th 103, 112-113; *People v. Hord* (1993) 15 Cal.App.4th 711, 724.)

In the trial court Sparks argued juror Stephanie R.’s declaration established misconduct in the form of coercion and improper psychological pressure by jurors George and Sam. He has abandoned that argument on appeal. Instead, he now argues Stephanie R.’s declaration detailed conduct that revealed either or both George and Sam held a racial bias not revealed in voir dire. That is, Sparks argues George’s comment Stephanie did not believe Sparks was guilty because she and Sparks are both African-American demonstrated George—and possibly Sam, who hissed at Stephanie and gave her menacing looks—harbored undisclosed racial bias (see *In re Hamilton* (1999) 20 Cal.4th 273, 294 [“where a verdict is attacked for juror taint, the focus is on whether there is any *overt* event or circumstance, ‘open to [corroboration by] sight, hearing, and the other senses’ [citation], which suggests a *likelihood* that one or more members of the jury were influenced by improper bias”]) that rendered it reasonably probable they had prejudged the case. (See *In re Hitchings* (1993) 6 Cal.4th 97, 120-121 [juror’s suppression of material information on voir dire created inference juror had prejudged case]; *People v. Merced* (2001) 94 Cal.App.4th 1024, 1031 [it is misconduct for juror to prejudice case].)

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<sup>4</sup> Evidence Code 1150, subdivision (a), provides, “Upon an inquiry as to the validity of a verdict, any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly. No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.”

Even if we believed Stephanie R.’s declaration were reasonably capable of the strained interpretation Sparks now proposes, Sparks has forfeited this argument because he failed to present it to the trial court. (See *People v. Williams* (1957) 153 Cal.App.2d 21, 25 [new grounds for granting new trial “may not be presented for the first time on appeal”]; *People v. Richardson* (1950) 95 Cal.App.2d 703, 706 [allegations of juror misconduct would not be considered on appeal when not raised during trial or in motion for new trial]; see generally *Wheeler v. Bolton* (1891) 92 Cal. 159, 167 [review of order denying new trial limited to “the grounds upon which the new trial was asked”]. “A motion for new trial may be granted only upon a ground raised in the motion.” (*People v. Masotti* (2008) 163 Cal.App.4th 504, 508 [trial court had no jurisdiction to order new trial on ground not raised in motion; “defendant waives his right to a new trial upon all grounds included within the provisions of [Pen. Code, § 1181] unless he specifies the grounds upon which he relies in his application therefor”]; see *People v. Skoff* (1933) 131 Cal.App. 235, 240.)

### **DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.